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NOTES OF CASES.

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**Homicide—Admissibility of Evidence that Defendant's Wife, Believed to Have Been Intimate with Deceased, Was a Prostitute Prior to Marriage.**—In *Bereal v. State*, 225 S. W. 252, the Court of Criminal Appeals of Texas held that in a murder prosecution, where defendant sought to reduce the crime to manslaughter because of sudden passion on learning of deceased's criminal intimacy with defendant's wife, where her conduct had been good for seven years, except with deceased, evidence that she had, prior to marriage, been an inmate of a house of prostitution was not admissible even under a statute providing that in every case where an unlawful killing is sought to be reduced to manslaughter by proof that the accused acted upon sudden passion, caused by insulting words or conduct of the deceased toward a female relative, it shall be competent to prove the general character of the female insulted, in order to ascertain the extent of the provocation.

The court said in part: "We cannot agree with the proposition that a man who has married a Magdalene may not love and be loved in return, and that she may not become the guarded object of his conjugal care. The man who frequents the houses of fallen women may feel that he is no better than they, and it would seem might link his fortunes with one of them without forfeiting his right to care for her and protect her thereafter; and if from the time of their marriage, he have every reason to believe her true and faithful to him, he should have every right arising in behalf of another man in defense of the honor of his wife, while she occupies to him that relation. If the manslaughter was admitted to be predicated on some insulting words regarding her character before she married, or if immorality on her part subsequent to her marriage appeared to be known to appellant, the case would be different, but if for seven years the woman had been appellant's wife, without lapse, we think he might invoke the law of manslaughter unhindered by proof of what she had been before they married. *Ballard v. State*, 71 Tex. Cr. R. 587, 160 S. W. 716."

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**Homicide—One Furnishing Poison at Request of Suicide Guilty of Murder.**—A wife, who was a helpless invalid, desiring to put an end to her suffering, requested her husband to prepare a quantity of paris green so that she could drink it and place it on a chair within her reach. He did as requested, and the wife, after partaking of the mixture, died in a few hours. She had once before tried to commit suicide by taking carbolic acid. The husband was charged with the murder of his wife, and convicted of murder in the first degree on his plea of confession and on testimony taken in open court, and duly sentenced to prison at hard labor and in solitary confinement for life.

The Supreme Court of Michigan affirmed the conviction in *People v. Roberts*, 178 Northwestern Reporter, 690. The court said in part:

"In considering the status of one who advises or aids another to commit suicide, Cyc. has this to say:

"Where one person advises, aids, or abets another to commit suicide, and the other by reason thereof kills himself, and the adviser is present when he does so, he is guilty of murder as a principal, or in some jurisdictions of manslaughter; or if two persons mutually agree to kill themselves together, and the means employed to produce death take effect upon one only, the survivor is guilty of murder of the one who dies. But if the one who encourages another to commit suicide is not present when the act is done, he is an accessory before the fact, and at common law escapes punishment because his principal cannot be first tried and convicted. The abolition of the distinction between aiders and accessories in some jurisdictions has, however, carried away this distinction, so that a person may now be convicted of murder for advising a suicide, whether absent or present at the time it is committed, provided the suicide is the result of his advice.' 37 Cyc. 521.

"It is said in Tiffany on Criminal Law that:

"He who kills another at his own desire or command is a murderer as much as if he had done it of his own hand; and the person killed is not a *felo de se*."

"To the same effect, McLains' Criminal Law, vol. 1, § 290; *State v. Ludwig*, 70 Mo. 412; *Commonwealth v. Bowen*, 13 Mass. 356, 7 Am. Dec. 154; *Commonwealth v. Mink*, 123 Mass. 422, 25 Am. Rep. 109; *Commonwealth v. Hicks*, 118 Ky. 637, 82 S. W. 265, 4 Ann. Cas. 1154; *Burnett v. People*, 204 Ill. 208, 68 N. E. 505, 66 L. R. A. 304, 98 Am. St. Rep. 206; *Blackburn v. State*, 23 Ohio St. 146. In the last case cited the facts and questions raised bear a close analogy to the case we are considering. A like contention was made with reference to suicide, and in answering it the court said:

"It is said by counsel that suicide is no crime by the laws of Ohio, and that therefore there can be no accessories or principals in the second degree in suicide. This is true. But the real criminal act charged here is not suicide, but the administering of poison. And to this criminal act there may be accessories, and principals in the second degree. If I furnish poison to a guilty agent, and accomplice, to be administered by him, and he administers it accordingly, I am an accessory before the fact; and if I stand by and counsel or encourage him in the act of administering the poison to another, I am a principal in the second degree. But no question of this kind arises in the present case, either upon the indictment or in the evidence. There is no claim or pretense that there was any guilty third person participating in the transaction. The charge is that the

prisoner, as principal in the first degree, is guilty of administering poison, and thereby causing death.'

"Whether the act of mixing the strychnine with wine and giving it to the deceased to drink was administering poison within the meaning of the statute, the opinion says:

" 'We think also that the court was right in instructing the jury, as in substance and effect it did, that it is immaterial whether the party taking the poison took it willingly, intending thereby to commit suicide, or was overcome by force, or overreached by fraud. True, the atrocity of the crime, in a moral sense, would be greatly diminished by the fact that suicide was intended; yet the law, as we understand it, makes no discrimination on that account. The lives of all are equally under the protection of the law, and under that protection to their last moment. The life of those to whom life has become a burden—of those who are hopelessly diseased or fatally wounded—nay, even the lives of criminals condemned to death, are under the protection of the law, equally as the lives of those who are in the full tide of life's enjoyment, and anxious to continue to live.'

" 'If discriminations are to be made in such cases as to the amount of punishment due to offenders, they must be made by the exercise of executive clemency or legislative provision. Purposely and maliciously to kill a human being, by administering to him or her poison, is declared by the law to be murder, irrespective of the wishes or the condition of the party to whom the poison is administered, or the manner in which, or the means by which, it is administered. The fact that the guilty party intends also to take his own life, and that the administration of the poison is in pursuance of an agreement that both will commit suicide, does not, in the legal sense, vary the case. If the prisoner furnished the poison to the deceased for the purpose and with the intent that she should with it commit suicide, and she accordingly took and used it for that purpose, or if he did not furnish the poison, but was present at the taking thereof by the deceased, participating by persuasion, force, threats, or otherwise, in the taking thereof or the introduction of it into her stomach or body, then, in either of the cases supposed, he administered the poison to her within the meaning of the statute.'

"We are of the opinion that, when defendant mixed the paris green with water and placed it within reach of his wife to enable her to put an end to her suffering by putting an end to her life, he was guilty of murder by means of poison within the meaning of the statute, even though she requested him to do so. By this act he deliberately placed within her reach the means of taking her own life, which she could have obtained in no other way by reason of her helpless condition."